

Indiana Department of Education

Division of Exceptional Learners

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1836.01
COMPLAINT INVESTIGATOR:	Steve Starbuck
DATE OF COMPLAINT:	November 26, 2001
DATE OF REPORT:	January 15, 2002
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	February 22, 2002

COMPLAINT ISSUES:

Whether the Spencer-Owen Community Schools and the Forest Hills Special Education Cooperative violated:

511 IAC 7-29-1(f) by failing to provide services to a student with a disability who was suspended for more than ten cumulative instructional days during the 2000-2001 school year.

511 IAC 7-29-5(a) and 511 IAC 7-17-38 by failing to:

- a. develop a plan for assessing a student's behavior subsequent to the student's suspension for more than ten cumulative instructional days; and
- b. conduct a functional behavioral assessment (FBA) in such a manner that allowed for the systematic collection and analysis of data, identification of patterns in the student's behavior, and identification of the purpose or function of the student's behavior.

511 IAC 7-29-5(b) and 511 IAC 7-17-8 by developing a behavioral intervention plan (BIP), subsequent to an FBA, that fails to identify:

- a. how the student's environment will be altered;
- b. positive behavioral intervention strategies to be utilized with the student; and
- c. specific skills to be taught to change the student's pattern of behavior.

511 IAC 7-21-2(c) by failing to provide preservice and inservice training to a paraprofessional during the 2000-2001 school year regarding the specific skills needed to work with the student or on the student's special needs and characteristics.

511 IAC 7-25-6(a) by failing to conduct a reevaluation of the student at least every 36 months.

511 IAC 7-26-6(b) by failing to include documentation that the student's disability is not the result of a sensory impairment when determining the student's eligibility as a student with an emotional disability.

511 IAC 7-27-6(a)(2) by failing to include in the student's individualized education program (IEP) annual goals that are measurable.

511 IAC 7-27-3(a)(3) by failing to include a general education teacher in the student's case conference committee (CCC) meetings.

The Complaint Investigation Report was originally due on December 26, 2001; however, due to the need to obtain additional information from the school, an extension was approved by the state director of special education on December 20, 2001, extending the deadline until January 16, 2002.

FINDINGS OF FACT:

1. The student is nine years old, attends the third grade, and has been determined eligible for special education due to an emotional disability.
2. Staff responsible for maintaining the student's attendance record for the 2000-2001 school year failed to record the days the student was suspended from school on the attendance record. According to the attendance record maintained by the student's teacher, the student was suspended from school for eighteen cumulative instructional days during the 2000-2001 school year. However, the student was not suspended for more than ten consecutive instructional days during the 2000-2001 school year. The eighteen instructional days the student was suspended from school constitute nine separate suspensions. Seven of these suspensions occurred prior to May 1, 2001. All but one suspension was due to aggressive or disruptive behavior exhibited by the student. The student incurred his eleventh instructional day of suspension from school on May 1, 2001. The director reports that there is no documentation to indicate that the student was provided with educational services after the tenth instructional day of suspension from school. An FBA and a BIP were developed and approved by a CCC on April 30, 2001; however, a CCC meeting was not convened until May 21, 2001, to review the existing BIP and its implementation and to modify the plan as necessary to address the student's behavior.
3. The FBA conducted in April 2001 includes a two-page Functional Assessment Interview form, a two-page Setting Events Checklist, and a one-page Setting Events Checklist Summary. In addition, the director reports that the student's daily behavior records were reviewed to assist in developing the FBA. Information obtained from these documents were then utilized to develop the Functional Assessment Summary and the BIP at a CCC meeting convened on April 30, 2001. The director reports the Setting Events Checklist provides a method for identifying the purpose or function of behavior, and that the Functional Assessment Summary and Behavior Plan indicate the function and patterns in the student's behavior. The student's BIP was revised at a CCC meeting convened on May 21, 2001.
4. The April 30th and May 21st BIPs identify the student's problem behaviors as profanity and aggressive, disruptive, and noncompliant interactions with peers and staff. As a means of altering the student's environment, the BIPs specify that the student will be removed from the classroom and taken to a separate room for aggressive behaviors that are a threat of harm to the student or others. As an example of positive behavioral intervention strategies, the BIPs allow the student to bring toys from home to play with at recess. When the student becomes disruptive in class, the BIPs allow the student to participate in a self-control processing curriculum to assist in developing skills to change the student's pattern of behavior.
5. Three instructional assistants worked with the student during the 2000-2001 school year. One instructional assistant worked with the student from the beginning of the school year until April 2001. According to training records, this former assistant received the following training since January 1996: Non-Violent Crisis Intervention Training and refresher courses, Good Behavior Basics-Inservice Training for Instructional Aides, Positive Behavior Motivation System Training, on-going training from the classroom teacher, and attended the 18th Annual Conference on Educational Programs for Students with Emotional Handicaps. In April 2001 two other instructional assistants

were assigned to work with the student. Training records indicate that in April 2001 one of these two instructional assistants received Non-Violent Crisis Intervention Training, Good Behavior Basics-Inservice Training for Instructional Aides, and on-going training with the classroom teacher. In April 2001 the other instructional assistant participated in Non-Violent Crisis Intervention Training and has received on-going training from the classroom teacher. The director reports the classroom teacher has a Master of Science degree in special education, has participated in numerous training sessions concerning the instruction of disabled students, and is licensed to teach students identified as emotionally disabled, mildly mentally disabled, and learning disabled.

6. Based on an Educational Evaluation Report submitted with the parent's letter of complaint, the student's last re-evaluation was completed on November 11, 1999. The director confirms that this was the last time the student was evaluated by the school. In November 2001 the director reports the parent requested that another evaluation be completed. The director states parent permission to conduct the evaluation was received by the school on December 5, 2001. According to the director, this evaluation is being expedited.
7. Initially, a CCC determined that the student had only a communication disorder. After the November 11, 1999, educational evaluation was completed, it was determined by a CCC that the student also had an emotional disability. The director reports that based on vision and hearing screenings conducted in October 1999, a determination was made that the student's emotional disability was not the result of a sensory impairment. The Referral for Educational Evaluation form reflects that a vision screening was conducted in October 1999, and that with glasses, the student's vision was normal. This same form indicates that the student passed the hearing screening on October 18, 1999.
8. The student's IEP dated April 2, 2001, contains three annual goals. The two academic goals are measurable; however, the student's behavioral goal is not measurable. The director acknowledges that the behavioral goal is not measurable and needs to be revised.
9. The student's April 2, 2001, IEP reflects that the student will receive academic and behavioral support in a self-contained classroom setting. The IEP indicates that the student will participate in lunch, recess, and specials in a general education setting. Nine CCC meetings were convened to discuss the student's educational program during the 2000-2001 and 2001-2002 school years. Of the nine CCC meetings convened, a general education teacher was only in attendance at two of the meetings.

CONCLUSIONS:

1. Finding of Fact #2 reflects that the school failed to provide services to a student with a disability who was suspended for more than ten cumulative instructional days during the 2000-2001 school year. Therefore, a violation of 511 IAC 7-29-1(f) is found.
2. Finding of Fact #3 establishes that an FBA was completed prior to the student's suspension from school for more than ten cumulative instructional days, and that the FBA allowed for the systematic collection and analysis of data, identification of patterns in the student's behavior, and identification of the purposes or function of the student's behavior. Therefore, no violation of 511 IAC 7-17-8 is found. However, Finding of Fact #2 indicates that a CCC meeting was not convened within ten business days after suspending the student for more than ten cumulative instructional days in a school year to review the student's existing BIP and its implementation and to modify the plan as necessary to address the student's behavior. Although the issue presented in this complaint was whether an FBA was conducted pursuant to 511 IAC 7-29-5(a), the investigation revealed that the

school had completed the FBA prior to the conduct resulting in suspension. However, 511 IAC 7-29-5(a) also requires that, if an FBA has been completed, the CCC must take action regarding a BIP for the student. This was not done in a timely manner. Therefore, a violation of 511 IAC 7-29-5(a) is found.

3. Finding of Fact #4 indicates that the BIPs developed for the student on April 30th and May 21st identify how the student's environment will be altered, positive behavioral intervention strategies to be utilized with the student, and specific skills to be taught to change the student's pattern of behavior. Therefore, no violations of 511 IAC 7-29-5(b) and 511 IAC 7-17-8 are found.
4. Finding of Fact #5 reflects that the instructional assistants assigned to work with the student during the 2000-2001 school year received preservice and inservice training regarding specific skills needed to work with the student. Therefore, no violation of 511 IAC 7-21-2(c) is found.
5. Finding of Fact #6 indicates the student's last re-evaluation was conducted within the 36 month time frame required by 511 IAC 7-25-6(a). Therefore, no violation of 511 IAC 7-25-6(a) is found.
6. Finding of Fact #7 reflects that hearing and vision screenings conducted in October 1999 were utilized to document that the student's disability was not the result of a sensory impairment when determining the student's eligibility as a student with an emotional disability. Therefore, no violation of 511 IAC 7-26-6(b) is found.
7. Finding of Fact #8 indicates the student's annual behavioral goal is not measurable. Therefore, a violation of 511 IAC 7-27-6(a)(2) is found.
8. Finding of Fact #9 reflects that the school failed to include a general education teacher at seven CCC meetings convened for the student during the 2000-2001 and 2001-2002 school years. Therefore, a violation of 511 IAC 7-27-3(a)(3) is found.

The Department of Education, Division of Special Education, requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Spencer-Owen Community Schools and the Forest Hills Special Education Cooperative shall:

1. Inservice all appropriate school personnel as to the requirements specified in 511 IAC 7-17-13, 511 IAC 7-27-3(a)(3), 511 IAC 7-27-6(a)(2), 511 IAC 7-29-1(f), and 511 IAC 7-29-5(a). Submit documentation to the Division no later than February 27, 2002, that all inservice training has been completed. The documentation shall include a list or an agenda of all issues discussed, any handouts that were distributed, and a list of attendees by name and title.
2. Convene a CCC meeting to :
 - a. determine the need for compensatory services for failing to provide the student with services once he had been suspended from school for more than ten cumulative instructional days in the 2000-2001 school year; and
 - b. develop a measurable annual behavioral goal.
 Submit a copy of the CCC Report and IEP to the Division no later than February 27, 2002.
3. Submit an assurance statement to the Division no later than February 27, 2002, that ensures a

general education teacher will be in attendance at all CCC meetings convened for students who are or may be participating in the general education environment. The assurance statement shall be signed by the director.

DATE REPORT COMPLETED: January 15, 2002